IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 369 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

G.M. HIRPARA, ASST. DEPOT MANAGER LALALA GODOWN

Versus

MANAGING DIRECTOR

Appearance:

MR VM PANCHOLI for Petitioner No. 1

MR KM PATEL for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 03/09/2004

ORAL JUDGEMENT

1.0 In this petition the petitioner has prayed to quash and set aside the order dated 18.6.2001 passed by respondent no.3 whereby penalty of stoppage of two annual increments without future effect has been imposed upon

the petitioner and also to quash the order dated 8.8.2002 passed by respondent no.2 and to give him all consequential benefits.

2.0 The petitioner is working in the respondent Corporation since last 19 years. When he was working as Assistant Depot Manager, Taluka Godown, District Junagadh, a chargesheet dated 9.10.2000 came to be issued to the petitioner alleging various charges.

2.1 The petitioner replied to the said chargesheet vide his reply dated 8.11.2000. In pursuance of the reply the respondent no.3 issued an order dated 81.6.2001 imposing a penalty of stoppage of two annual increments without future effect.

2.2 This was done without holding any inquiry. The appeal filed by the petitioner also came to be dismissed. It is against the said decisions the present petition has been filed.

3.0 The main grievance of the petitioner is that the penalty has been imposed upon him without holding any inquiry. Mr. Panchaoli submitted that even as per rules of the respondent Corporation an inquiry is to be conducted. The relevant part of Rule 8 reads as under:

"8. (1) No order imposing on an employee any of the penalties specified in items 1 to 4 of Rule 6 above shall be passed except after:

(a) informing the employee in writing of the proposal to take action against him and of the imputations of misconduct or misbehaviour or any culpable act or omission on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.

(b) holding an inquiry in the manner laid in sub-rules 3 to 22 of Rule 9 below in every case in which the Disciplinary Authority is of the opinion that such inquiry is necessary. If the Disciplinary Authority is of the opinion that holding of such inquiry in the manner laid down in sub-rules 3 to 22 of Rule 9 below is not necessary, reasons thereof shall be recorded in writing by

the Disciplary Authority.

(c) taking the representation, if any, submitted by the employee under clause (a) above and the record of inquiry, if any held under clause (b) into consideration;

(d) recording finding on each imputation of misconduct, misbehaviour or any other culpable act or omission."

4.0 Admittedly in the present case the disciplinary authority has not recroded any reason for not holding the inquiry. No opportunity has also been given to the petitioner. Therefore, I am of the opinion that the order of the disciplinary authority was passed in gross violation of principles of natural justice. Only on that ground the impugned order of disciplinary authority, which is confirmed by the appellate authority, is required to be quashed and set aside.

5.0 While quashing and setting aside the impugned orders I do not enter into the merits of the matter in view of the fact that any observations made in this order will prejudice either of the party in future and only on the ground of violation of principles of natural justice the present petition is allowed.

6.0 In the premises aforesaid, the petition is allowed. The impugned orders dated 18.6.2001 and 8.8.2002 are quashed and set aside. Rule is made absolute accordingly with no order as to costs. The petitioner shall be paid all the consequential benefits flowing from the present order. However, it is clarified that it will be open for the respondents to conduct fresh inquiry in accordance with law.

[K.S.JHAVERI, J.]

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